If you have subsidiary legislation dealing with a specific point for which the enabling law has not provided authority it may well be that such subsidiary legislation is, or may be held to be, *ultra vires* but if you amend such enabling law by including that authority, then such subsidiary legislation becomes *intra vires* from the date of such amendment and if the amending legislation specifically says so, it may even have retrospective effect.

In the 1928 case the learned C.J. ruled that the general term "place" was coloured and controlled by the special term "garage" which preceded it but you must also read the section as a whole and these words were followed by the words "kept or used for repairing, painting, storing or housing motor vehicles." He held that the piece of waste land was not a garage nor was it "a place" intended by the section for storing or housing motor vehicles. I agree that one does not store or house motor vehicles on a piece of waste land but the addition of the words "or parking" inserted by the amending Ordinance requires the preceding words to be construed afresh and possibly in a different sense. The Oxford Dictionary defines "Park" as "a place where motor vehicles may be left unattended" and all the definitions in this connection refer to an open and not a roofed space. The amendment to the Ordinance makes the intention perfectly clear, that is, that parking places for public vehicles within the Municipality must be authorised as laid down in the Bye-laws and in construing the Ordinance and Bye-laws the object and intention of the legislature must, if possible be given effect to and followed and the words of a statute must be construed so as to give a sensible meaning to them if possible.

In my opinion, the 1928 case is not now authoritative on the point raised in the present case, in view of the facts in that earlier case and in consequence of the amendment to the Ordinance and I hold that the word "places"after the word "garages and" in Section 58 includes all places, whether enclosed or not, that are used for the parking of motor vehicles, subject of course, to the limitation contained in the Section.

Mr. Walters argued in the alternative that the accused should not have been convicted on the charge as framed. As I have stated, the charge might have been framed in better and clearer terms and no objection was raised at the trial but the case was argued at the trial on the very basis of the parking of motor vehicles in an unauthorised place. This point is also covered by Section 177 of the Criminal Procedure Code.

For these reasons I hold that the Magistrate was correct in convicting the accused.

I am grateful to Mr. Walters for having argued the case *amicus curiae*.

Order Accordingly.

CHEN CHI YA v. K. NAGAPPAN.

[Orig. Civil Juris. (Taylor, J.) May 27, 1949]

[Singapore — Civil Suit No. 344 of 1948]

Control of Rent Ordinance, 1947, S. 14 — Assignment in breach of obligations of tenancy — Sub-letting — Acquiescence.

Assignment of a monthly tenancy by the tenant, though in breach of an obligation not to assign without the landlord's consent, may pass the tenancy to the assignee but he is liable to be ejected at the discretion of the Court.

Principles and construction of the Control of Rent Ordinance, 1947, discussed and Oriental "hypothec" considered.

Cases referred to:—

(1) *Abdul Rahman v. Hassan* 1 F.M.S.L.R. 290 (P.C.).

(2) *Loke Yung Hong v. Shanghai Furniture Co.* (1948) M.L.J. at p. 143.

CIVIL SUIT.

Mark Morrison for the Plaintiff.

K. E. W. Hatchard for the Defendant.

The facts and arguments sufficiently appear from the Judgment.

Taylor, J. : — In this action the plaintiff, who is a landowner, claims possession of No. 1 Joo Chiat Road, damages for trespass and mesne profits.

The defendant, who is a master barber, contends that he is entitled to possession, because he became a tenant, in one or other of four ways, viz :—

(a) On assignment or sub-letting by a previous tenant;

(b) by acquiescence;

(c) on transfer to him of the business carried on in the premises;

(d) on a letting to him by the Japanese Custodian during enemy occupation.

The facts are as follows:

In 1939, the property was conveyed to the plaintiff, who is now abroad, by his father who has since managed the property on his behalf. The authority is not disputed and the word "plaintiff", in this judgment may, for brevity, include the father as the plaintiff's agent.

There are two bundles of correspondence, an agreed bundle A, and a supplementary bundle S.

On 11th November 1937, by an agreement in writing, S. 1, the plaintiff let the house to one Singaravelu, proprietor of the Union Hairdressing Saloon, from 1st December, on a monthly tenancy, terminable by one month's notice on either side; the rent was $30.00; the agreement provided, *inter alia*:—

> The tenant shall not transfer the tenancy or sublet without the previous written sanction of the landlord.

There was no proviso for re-entry in the event of a breach of this stipulation.

A general security deposit of $30.00 was paid by the tenant, and a receipt therefor was embodied in the agreement.

Singaravelu was already in occupation as tenant of the plaintiff's vendor.

By a written instrument, S. 3, dated 21st August 1939, Singaravelu, in consideration of $650.00, "assigned" to the defendant "all the rights in respect of a Barber Shop" to be carried on by the defendant for 18 months, at the expiration of which Singaravelu was to repay the $650.00 and take over the shop, or in default, the defendant was "to have all the equipment as his absolute property."

Similar agreements were made on several subsequent occasions; they differ in detail but are all the same in substance; there was some argument as to their effect but in my opinion the key was supplied by the defendant himself who said, spontaneously :—

> I needed money and allowed the other man to take the profits.

This transaction is essentially oriental in character and it is misleading to call it by any name derived from English Law because it does not correspond to any one English concept. At first sight it may look like a lease but in essence it is a conveyance in security and our nearest analogue is a usufructuary mortgage. It is similar to the Malay *chagaran*. For want of a convenient short name, I will call it a "hypothecation" but that does not mean that it is identical with a hypothec in Roman Law.

In our law it is a contract and as such it is valid and enforceable between the parties but though it is in the nature of a mortgage the legal incidents of a mortgage do not arise — *Abdul Rahman v. Hassan*[1]. In that case the subject matter was land but the principle is the same.

In this case the subject matter is the business as a going concern, including the trade name and the goodwill, in so far as goodwill attaches to a precarious tenancy, but the instrument does not purport to assign the tenancy itself.

It is clear from the oral evidence that the tenancy was dealt with by means of a separate concurrent oral agreement between the parties. Singaravelu handed over the agreement-cum-deposit-receipt of November 1937 and received from the defendant a separate specific payment of $30.00. He then told the plaintiff that he was going to India and introduced the defendant as the man who would manage his business and pay the rent during his absence. To this the plaintiff assented but the document of 21st August was not shewn to him. It is not suggested that he was informed of its existence, still less that he was invited to assent to a transfer of the tenancy. That would have been inconsistent with Singaravelu's right to resume occupation, which right was an essential feature of the arrangement.

On the expiration of the period of 18 months, Singaravelu did not return and, so far as the evidence goes, he has remained in India ever since. The defendant thereupon became the absolute owner of the business but he did not make any further communication to the plaintiff who continued to issue rent receipts in the name of "Singaravelu — proprietor, Union Hairdressing Saloon".

Early in 1942, the plaintiff instructed an Agency company to collect his rents; their ledger was produced; where the tenant had a trade name, they usually recorded both the trade name and the tenant's personal name in and accordingly, in this instance, both "Singaravelu" and "Union Hairdressing Saloon" were written in the column for the tenant's name. The clerk who made out the rent receipts might write either name or both but in practice the person paying rent usually produces the previous month's receipt, from which the clerk may copy the particulars without necessarily referring to the ledger on every occasion.

The Agency company collected the rent till August 1942 when the plaintiff's father resumed control. In 1944, the Japanese Custodian discovered that the plaintiff himself, the legal owner of the property, was beyond the line of war and therefore an "enemy" of the occupying power; thereafter his office collected the rent until the Liberation.

Late in 1945 the plaintiff again obtained control and proceeded to verify the tenancies. The person then in occupation of the premises was an Indian who was carrying on the "Union Hairdressing Saloon" and the plaintiff took him to be an agent of Singaravelu.

The facts were that the defendant "hypothecated" the business on several occasions, in the manner already described, but always redeemed it on expiration.

The position in October 1945 was that the defendant had "hypothecated" the business to one Pakirisamy for 3 years from March 1945 and Pakirisamy or one of his assistants, paid the rent, the plaintiff still regarding Singaravelu as the tenant. There is some conflict of evidence as to this period but it is more apparent than real. When a Chinese and a Tamil converse in Malay there is appreciable possibility of genuine misunderstanding. Pakirisamy, having paid money for the right to run the business, regarded himself as entitled to occupation. His main idea was to pay the rent and avoid any controversy with the landlord during his term. The ultimate position as between defendant and plaintiff was not his concern. If the plaintiff said "Where is Singaravelu", the answer was "He is in India." If the plaintiff said "Where is the towkay?" (plaintiff meaning Singaravelu), Pakirisamy's Manager might well reply "Still in India" though in his own mind he regarded Pakirisamy, not Singaravelu, as the towkay or owner of the business. I do not believe that the defendant and his witnesses were as disingenuous as they would like to appear. They knew perfectly well what the true position was and they knew that the plaintiff was not fully aware of it. They allowed the plaintiff to remain unaware but this was not in their own minds fraudulent. Their real attitude, as the defendant expressly admitted, was that as long as they paid the rent the plaintiff could look after himself. It may be quite true that some landlords do not object to such changes and no doubt substituted occupiers do sometimes become tenants by acquiescence but I find in this case that the plaintiff never knew the real position. He regarded Singaravelu as the true tenant and the other people as his agents.

In December 1947 an amendment of the law permitted some increase of rents, and the plaintiff wrote to all his tenants giving them formal notice to quit and enclosing forms of tenancy agreement for signature by those who accepted the new terms. At this time the business was still "hypothecated" by the defendant to Pakirisamy but the latter had gone to India leaving a relative named Pitchay as manager.

Pitchay signed the form "for S. Pakirisamy" and took it personally to the plaintiff who then discovered the position and refused to accept rent from Pitchay or to recognise either him or Pakirisamy as the tenant. Pakirisamy's term expired in March 1948 and the defendant himself then tried to persuade the plaintiff to give or confirm the tenancy to him but the plaintiff refused and expressly forbade the defendant to go into occupation. Defendant, however, resumed occupation, relying on what he considered to be his legal rights as a tenant by assignment, and this action was started.

I will now deal in turn with the four main contentions of the defendant already set out.

The argument on assignment and sub-letting, as developed during the hearing, resolves itself into the following propositions :—

(a) The tenancy originally granted to Singaravelu was in law assignable, despite the prohibition in the written agreement.

(b) It was sublet to the defendant in conjunction with the "hypothec" of the business.

(c) This sub-letting became an absolute assignment on Singaravelu's failure to redeem the business.

(d) Thereafter, the defendant was the absolute legal owner of the tenancy and was entitled to deal with it as he liked, subject only to payment of the rent.

(e) Defendant could and did sublet in conjunction with his various subsequent "hypothecations" but since he always redeemed on the due date the sub-lettings by him were never converted into assignments.

(f) As the sublettings were for limited terms which never exceeded three years, there was no need for the landlord to know anything about them. As a matter of courtesy and convenience, however, the successive occupiers were always introduced to him so that he would know who would pay the rent.

(g) Whether, in case of default by the occupier, the plaintiff was entitled to look to the defendant to pay the rent is a question which never arose and was probably never considered.

(h) The defendant, being the legal tenant, was entitled to resume occupation on paying off the latest of the "hypothecs" and he is entitled to remain there indefinitely subject, of course, to payment of the statutory rent and to refraining from nuisance but apparently not to any other restriction.

These are large claims. The initial proposition that assignment in breach of the tenancy agreement is nevertheless effective to convey the tenancy to the assignee is founded on the doctrine, summarised in the tenth edition of *Hill* and *Redman*, at page 501, that a tenant from year to year, *or other term*, has a right to assign or sublet and that even if he does so in contravention of the stipulations in his tenancy, the transaction is not void though a liability for breach of covenant may arise. This doctrine is reasonable and natural in relation to a lease, even a yearly one, for a premium was often payable and the tenant might install fixtures so that forfeiture of the residue of the term for a more or less technical breach would have been inequitable. It is said that the same rules apply to a monthly tenancy; perhaps they did in theory but no case was cited to shew that they have ever been

relied on in practice before the rent restriction laws were introduced. I think the reason is plain. An assignee or sub-lessee cannot have greater rights than the original tenant; therefore if an occupier said "I am a legal tenant by assignment" the landlord was in a position to reply "Conceding that you are, kindly take notice and quit at the end of next month". Thus, apart from the Rent Acts, the question whether a monthly tenancy was assignable or not was never worth litigating. If the landlord wanted to recover possession of the house he could do so more quickly and more cheaply by admitting the disputed assignment than by denying it. Moreover he could do this irrespective of whether the transaction was in breach of a condition, or of a covenant. He could do it even where there had not been any breach whatever.

It follows that the defendant cannot succeed on the Common Law alone. He must rely on the Rent Ordinance. In short, his contention is: — Once a tenant, then a tenant for the duration. The case therefore raises a broad question as to the principles on which this Ordinance is to be construed.

In the first place it is necessary to consider the state of the law before the enactment and the mischief to be redressed and to construe any doubtful provision in such a way as to check the mischief and advance the remedy.

In normal times economic forces tend to equate supply to demand. A good tenant needs no special protection because the landlord will neither eject him without sound reason, nor raise the rent unduly, lest the house stand empty.

In times of crisis and war there are shortages of labour and materials of all kinds and considerable shifting of population. Such a situation tempts those who control supplies to exploit the general emergency for their own selfish ends by raising prices against the public, and hence the need for anti-profiteering legislation. In principle the rent restriction laws do not differ from any other price control, though the technical details are different. The method is not to prevent business, or to abrogate the rights of the owner to contract or deal with his property but only to control the exercise of those rights so as to prevent exploitation of the public. It is not the object or policy of the legislation to create a new class of privileged tenants at the expense of the landlords. The law does not aim at any redistribution of property. It merely establishes temporary control for the period of the emergency. The existing Ordinance, No. 25 of 1947 is renewable annually and is expressly stated in the preamble to aim at the control of rent and matters incidental thereto. The object is to protect tenants as a class, inluding certain sub-tenants, not to benefit individuals who happened to be tenants on a particular date, or their assignees.

Now assignment and sub-letting are two distinct things and ought not to be coupled in one plea.

Assignment means going out in favour of a purchaser or substitute, the original tenant retaining no interest and no right to return. This is not expressly mentioned in the Ordinance; the word "Assignment" does not occur.

Sub-letting is of two kinds. One form is the practice, very common in this country, of a tenant, often called the "chief tenant", letting parts of a house to several different people, retaining a portion for himself. Another case is that of a tenant who sublets the whole house, while he goes on furlough to his own country, retaining a right to resume occupation on his return. Both forms are mentioned in Section 14 (1) (j).

The Ordinance provides that a landlord shall recover possession only in one or other of certain specified cases of which the following are relevant:—

(b) Where any obligation of the tenancy has been either broken or not performed by the tenant and the Court considers recovery to be reasonable.

This provision expressly includes both positive and negative obligations and may therefore be applied either where the tenant has assigned in breach of an unqualified clause against assignment or where he has omitted to comply with a requirement that he should obtain the landlord's consent.

(j) Where the tenant having sublet the whole or part, receives from his sub-tenants, more than three-quarters of the total rent, subject to allowance for Municipal charges.

(i) Where the tenant is not, by himself or his family, in actual occupation.

(m) In any other case where it is reasonable that the landlord should recover, provided that alternative accommodation is available for the tenant. This may apply even where there has been no breach of any express obligation.

Section 15 expressly deals with sub-letting, whether of the whole or a part, where the tenant was not, by the terms of the tenancy, prohibited from sub-letting.

It converts the sub-tenants of an ejected tenant into direct tenants of the landlord.

All these provisions are subject to this overriding consideration. Section 14 is enacted in the negative. It does not say that where this or that has occurred the landlord may recover possession. It says that the landlord shall not recover unless one or other of these events has occurred. This means that even where the landlord sets up a permissible ground, he does not succeed as of right; the Court still has a discretion and will only allow the application if it is reasonable.

In each context "reasonable" means reasonable in all the circumstances of the case and having regard to the true objects and scope of the Ordinance.

This discretion is not fettered by the Common Law distinction between conditions and covenants. The legislature are deemed to have in mind the antecedent law on the topics dealt with, including the case law. If they had meant to retain that distinction they would have done so explicitly. The word "obligation" was used advisedly to embrace both contractual obligations and those arising from tenure. The structure of the Ordinance is designed to prevent anomalous results.

I reach these conclusions on three grounds. First on the plain and ordinary grammatical meaning of the bare words of the Statute; secondly on construction *secundum materiam* and thirdly on authority; in *Loke Yung Hong v. Shanghai Furniture Company*[2], Evans, J., said that the corresponding Ordinance of the Malay States was "not intended to confer on the tenant a new vested interest which he can sell."

It remains to apply these principles to the facts proved. Up to a point the argument of the defendant is correct. Despite the prohibition in the tenancy agreement, Singaravelu could assign and sublet. On the peculiar history of this case I find that he did both. The combined effect of the hypothec and the other evidence is that he first of all sublet and then on his failure to return he, by necessary implication, assigned; the defendant thereupon became the tenant.

It is suggested that because the tenancy passes despite the breach of the agreement, the breach is in some way repaired. This is the fallacy. The breach remains. And apart from the Ordinance the landlord could, as I have shewn, in the case of a monthly tenancy, recover possession whether the breach was of a covenant or of a condition. The Ordinance modifies this position by providing that he can only do so if the Court considers it reasonable.

It might be said that on a strict construction of Section 14 (1) (b) the words "the tenant" mean the person who is the tenant at the date of the application and that the breach in question was committed by the the assignor not by the assignee. I do not think this argument would be sound. The assignee is deemed to know the terms of the tenancy transferred to him and if he accepts a prohibited assignment, he is a party to the breach. Also this defendant had actual knowledge of the prohibition. He is liable to be ejected at the discretion of the Court.

The next question is — On what principle is the discretion to be exercised? Here the Ordinance itself gives some guidance. The defendant has repeatedly sublet for long periods throughout each of which he was wholly out of occupation and received from his sub-tenant more than three-quarters of the rent payable by him. Physically he received nothing, the sub-tenant always paying the rent directly to the landlord, but in effect he received the whole of the rent. Each of these is a statutory ground on which the landlord could have applied for possession, had he known the facts.

If ejecting the defendant involved giving the landlord an opportunity to raise the rent to the limit of famine prices one might hesitate but since he cannot lawfully receive from a new tenant a higher rent than the defendant has offered, the policy of the Ordinance does not require that the discretion should be exercised against the landlord.

The defendant made the not uncommon allegation that the plaintiff's real object was to exact a premium or "tea money" from a new tenant; he also alleged that the plaintiff had offered to him a substantial sum if he would quit. If this were proved it would be a strong reason to refuse the application but I do not accept his evidence. The defendant was, throughout, a less satisfactory witness than the plaintiff.

As the defendant has another business, and more particularly since the history of the matter shews that his main interest for many years has been to use this tenancy as an asset on which to raise capital for other ventures, there is no special reason to exercise the discretion in his favour. On the issue of assignment therefore, the plaintiff succeeds.

As regards sub-letting the defendant, who as I hold is the legal tenant, is now himself in occupation so provision (j) does not, in terms, apply but regard may be had to its principle in exercising the discretion under provision (b).

Moreover, although the defendant was in occupation when the writ was issued, he was not in occupation when the dispute arose. He had been out for 3 years

and resumed occupation in defiance of the plaintiff who at their interview in March expressly forbade him to do so.

The next issue is acquiescence and this has two facets. It is, I think, settled that a tenancy by acquiescence arises only where the landlord acquiesces in a change of tenant with full knowledge of the facts.

The defendant pleaded acquiescence as an alternative in case he should fail to establish a tenancy by assignment; as I have found that he became a tenant by assignment this plea need not be considered for its primary purpose but it is important in another way.

Where a landlord creates a new tenancy by acquiescence he would usually, if not inevitably, be held to have condoned any antecedent breaches of obligation and this would preclude him from relying on them to support an application under provision (b).

In this instance I have found that the landlord did not know the facts and that, to some extent, the occupiers consciously withheld them from him. Therefore no tenancy by acquiescence arose and also there was no condonation.

As to the transfer of the business, it became quite clear in the course of the trial that none of the successive "hypothecs" purported to comprise the tenancy which was always and expressly dealt with separately, the original agreement-cum-deposit-receipt being treated, quite erroneously, as a bearer security. These separate oral sub-lettings are covered by what I have said already.

There remains the contention that, apart from them, the "hypothecs" carry the tenancy by necessary implication. The argument is that the plaintiff knew from the start that Singaravelu called his business the "Union Hairdressing Saloon"; that the defendant became the true owner of the business, including this Business Name, on "foreclosure" of the first "hypothec" and that the plaintiff is bound by having issued rent receipts in the business name.

(In so far as this last point overlaps the plea of acquiescence it is covered by what I have said on that issue).

The fallacy in this argument arises from the tacit assumption that the use of a business name creates a legal entity separate from the proprietor. It does not. If Singaravelu had turned his business into a "one man company" called Union Hairdressing Saloon Limited, and the defendant had issued receipts in that name, the result desired by the defendant would probably have been achieved; he could have pledged or sold all the shares in the Company. But in that case the tenant would have been another juridical person, clearly distinct from all the other parties.

A man cannot confer the attributes of a corporation on himself by adopting a trade name. It is merely an alias. When first adopted, the name "Union Hairdressing Saloon" was not in law distinguishable from "S. Singaravelu". The plaintiff and his agency company sometimes used one and sometimes the other or both. The defendant acquired, *inter alia,* the right to use the name but he acquired this right only as between himself and Singaravelu by virtue of their contract. The plaintiff is not affected by a contract of which he never knew. This plea is wholly misconceived.

Finally there is the plea of a new tenancy created by the Japanese Custodian. That officer may have had power in case of need to create tenancies but there is no presumption that he exercised it. A Custodian is not in any sense the agent of the absent owner or a trustee for him. He is a statutory authority appointed by his own Government to whom alone he is responsible. He is *sui generis* and not closely analogous to any functionary, official or private, known to the ordinary law. He functions mainly, under two types of order — A Payment Order, which is a general statutory order requiring all moneys otherwise payable to "enemies" to be paid to him, and vesting orders which usually relate to specified property. I do not think the Custodian could let property unless either it were vested in him or a special power were conferred. The Japanese Custodian carried on the existing office of the Custodian of the Colony, with the same staff, under the same laws, on the same general lines and largely even with the same ledgers.

The evidence is merely that the occupier received notice to pay rent to the Custodian because the landlord was an "enemy", as indeed he was. The occupier complied — producing the last rent receipt and obtaining subsequent receipts from the Custodian's clerk in the same name, which was "Union Hairdressing Saloon". The main idea of almost any man in such a case was to pay the money and go home, if possible without seeing a Japanese official. There is no suggestion of any vesting order or of any application or negotiation of any kind. The plain and necessary inference is that the Custodian acted under the Payment Order, or its Japanese equivalent, and so far as he was concerned there was no change or creation of tenancy.

I find therefore that all these alternative defences fail. The defendant is in law the tenant and not a trespasser so the claim for damages fails but his

obligations have been repeatedly broken or not performed and I consider it reasonable that the landlord should recover.

The defendant must yield possession of No. 1 Joo Chiat Road, on the last day of June, 1949, being the expiration of the month commencing next after the delivery of this judgment. He must pay rent at the statutory rate up to the date of vacation.

I will hear argument as to costs.

Judgment for Plaintiff.

REX v. TEO CHENG LIAN.
REX v. LECK KWEE SER.

[App. Crim. Juris. (Gordon-Smith, J.) May 31, 1949]

[Singapore — Magistrate's Appeals Nos. 31 & 34 of 1949]

Criminal Procedure Code — Appeal — Sentence — Increasing Sentence on Appeal.

These two appeals were appeals by the Deputy Public Prosecutor against the sentences passed by the learned Magistrate on the grounds that a sentence of a fine only is inadequate as a deterrent to bribery and corruption.

Held, (1) that there must be a manifest error, either in law or in considering the facts and circumstances of the case or an omission to consider such facts and circumstances, before the appeal Court will interfere with the discretion undoubtedly vested in the Lower Court, (2) that in these cases the learned Magistrate had failed to take into consideration the fact that bribery and corruption of officialdom is like a cancer which may grow and destroy the whole body, and as the mere imposition of a fine is unlikely to act as a deterrent in this class of offence, the sentences in this case must be altered to sentences of imprisonment.

Cases referred to :—

(1) *Kurt Huessener and John Schroeder* 6 C.A.R. 173.

(2) *Gumbs Case* 19 Cr. App. R. 74.

(3) *Withers* 25 Cr. App. R. 53.

APPEALS FROM MAGISTRATE.

A. D. Farrell (D. P. P.) for the Crown.

Accused in person.

Gordon-Smith, J. : — In these two cases the D.P.P. appeals against the sentences passed by the learned Magistrate on the grounds that a sentence of a fine only is inadequate as a deterrent to bribery and corruption.

In the first case, Teo Cheng Lian was convicted on two charges (a) in assisting in the carrying on of a Public Lottery, namely, Chap Ji Kee, and (b) abetment of illegal gratification to a Detective Corporal. He was fined $300/- on the first charge and $50.00 on the second.

In the second case Leck Kwee Ser was fined a similar amount of $50/- for abetment of illegal gratification to a Registration Clerk.

The facts are relevant and very briefly are as follows: In the first case when being stopped for examination of his Registration Certificate, Chap Ji Kee tickets were also found on the accused and he handed $40.00 to the Police with the request for help. He pleaded guilty to the first offence but not guilty to the 2nd, but was convicted.

In the 2nd case the accused pleaded guilty. He was applying for a duplicate registration certificate over which there was some slight difficulty and prospective delay and the accused handed the clerk $4.00 presumably for his assistance in and to expedite the matter.

In both cases the learned Magistrate stated that he had taken into account the custom in Asia and particularly amongst Chinese, of people offering gifts in return for favours received or anticipated; from a gift without conditions to a bribe was a small step; that both accused were first offenders and that in both cases there was neither deliberation nor premeditation.

No question arises as to this Court being competent to enhance or reduce a sentence on an appeal, whether the appeal is as to sentence or conviction only, the point being as to when the Court should exercise such power. In England, the Court of Criminal Appeal only has such power of enhancement when the sentence itself is appealed against and the accused has to be warned specifically of the possibility of such enhancement before proceeding with his appeal. The only bribery and corruption case that I have been able to find is that of *Kurt Huessener and John Schroeder*[1] in which the appellants had been sentenced on several charges to 6 months and 4 months respectively, concurrently, and had appealed in this respect. In this case the Court stated that there was no error in point of law by the learned trial Judge and that "it is impossible for us to say that the offences were only slight or trivial." "It was eminently a matter for his discretion." This case was not one of bribery of public servants or officials.

In Gumbs Case[2], the Lord Chief Justice said :—

> Two principles from time to time have been mentioned in this Court, and in some cases they may have to be considered together. One is that this Court never interferes with the discretion of the Court below merely on the ground that this Court might have passed a somewhat different sentence; for this Court to revise a sentence there must be some error in principle. Secondly, when a man has committed serious offences and has served long terms for them, it is not required that he should suffer